



Appeal Decision

Site visit made on 16 September 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 September 2020

Appeal Ref: APP/A0665/W/19/3228575

Dones View Farm, Northwich Road, Lower Whitley WA4 4HD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant approval required under Schedule 2, Part 3 Class PA of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO).
 - The appeal is made by Mr Barry Michael Devine against the decision of Cheshire West & Chester Council.
 - The application Ref 18/03836/PDQ, dated 1 October 2018, was refused by notice dated 21 November 2018.
 - The development proposed is change of use from commercial to a dwelling of redundant barn/workshop.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Barry Michael Devine against Cheshire West & Chester Council. This application is the subject of a separate Decision.

Procedural Matters

3. The appellant submitted the application on a form entitled 'Notification for a Proposed Change of Use of Agricultural Building to a Dwellinghouse (Class C3), and for Associated Operational Development. However, it is clear from the description of development that the appellant intended the proposal to be considered under Part 3 Class PA of the GPDO. Since this formed the basis of the appellant's appeal the Council has had the opportunity to comment on the implications of this and I shall consider the appeal on this basis.
4. The appellant makes reference to a subsequent application for which the decision, it is asserted, was issued out of time. Whilst I have been provided with a decision letter from the Council¹, I have no substantive details of this application. Furthermore, this appeal was made against the refusal of the application made on 1 October 2018 and so this forms the basis of the appeal before me.
5. Since the appeal was lodged the Town and Country Planning (Use Classes)(Amendment)(England) Regulations 2020 has come into force. Section 3(3)(a) of the Regulations sets out that on or after 1 September 2020, and for the purposes of (a) making an application in relation to development permitted by any Class in Schedule 2 to the GPDO which is expressed to be subject to prior approval, or determining whether such approval is required, any

¹ Dated 8 March 2019

references to uses or use classes specified in the Schedule to the Use Classes Order are to be read as if those references were to the uses or use classes which applied in relation to England and were specified in the Schedule to the Use Classes Order on 31st August 2020². I have considered the appeal on this basis.

6. The Council has issued an enforcement notice regarding alleged works which is the subject of another appeal.

Main issue

7. The Council's reasons for refusal of the application flow from its consideration of the proposal as an application for Notification for Prior Approval for a Proposed Change of Use of Agricultural Building to a Dwellinghouse (Class C3), and for Associated Operational Development. However, as set out above, the appellant submitted the application on the basis that it should be considered under Part 3 Class PA of the GPDO.
8. In light of the above, I consider the main issue to be whether the proposed development would be granted planning permission by Article 3, Schedule 2, Part 3, Class PA of the GPDO.

Reasons

9. Part 3, Class PA of the GPDO permits the change of use of a building and any land within its curtilage from a use falling within Class B1(c)³ (light industrial) of the Schedule to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of that Schedule. Development is not permitted if (b) the building was not used solely for a light industrial use on 19 March 2014 or, in the case of a building which was in use before that date but was not in use on that date, when it was last in use. Whether this was the last lawful use of the building is a question of fact to be established based on the evidence.
10. The appeal building is a substantial brick-built building which was part of a farm from 1908, prior to its sale to the appellant in 2000. The appellant states that he has used the building as a workshop and for storage use, with storage and workshop use on 19 March 2014. He also states that the Council did not impose requirements on the sale of the building regarding its use and that the building was not at any time part of any residential curtilage. Whilst this may be true, this does not demonstrate that the lawful use of the building is a B1(c) light industrial use.
11. The Council has provided an overview of the planning history for the appeal site which indicates that planning permission has not been granted for the use of the building for storage and/or a workshop. S191(2) of the Act states that uses and operations are lawful at any time if no enforcement action may then be taken in respect of them and they do not constitute a contravention of any of the requirements of any enforcement notice then in force. S171B(3) of the Act sets out that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

² Applies during the material period, which means the period beginning with 1st September 2020 and ending with 31st July 2021.

³ Any industrial process, being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

12. In order for the appellant to demonstrate the building has a lawful use B1(c) use, he would need to show that the use of the building began on or before 19 March 2004⁴ and that it continued without significant interruption for at least 10 years thereafter. The appellant states that the building has been used in connection with his business as a builder, as workshops for building operations involving joinery made on site and by his two sons businesses manufacturing vehicle carpets / silverscreens. However, the appellant has provided no substantive details as to exactly what these uses comprised or how the building was used and over what period.
13. The appellant asserts that the Council accepts the current use (of the building) is B2. However, the commentary made by the Council was in relation to evidence submitted in support of a subsequent application for the fitting out of vehicles. The Council advised it considers the fitting out of vehicles would fall within a B2 use, not that the lawful use of the site is a B2 use. Furthermore, whilst the GPDO grants development consisting of a change of use of a building from any use falling within Class B2 to a use for any purpose falling within Class B1, it would need to be demonstrated that such a change of use had occurred by the relevant date⁵.
14. There is a paucity of documentary evidence to support the appellant's assertion that the appeal site was in B1(c) use on or before 19 March 2014. I note that the appellant states that he is willing to provide additional information on request, however, it is for the appellant to make his case. Whilst there may have been some industrial activity going on at the site, I am unable to conclude on the evidence before me that, by 19 March 2014, the building was or had been in lawful B1(c) use.
15. Thus, for the reasons given above, I conclude that the proposed development would not be a permitted development under Schedule 2 Part 3 Class PA of the GPDO. In light of my conclusion in this regard, it is not necessary for me to determine whether or not the development has commenced or whether the building has been substantially reconstructed.

Other Matters

16. Whilst the Council has not raised any concern in relation to transportation, contamination, flood risk or the provision of industrial and or storage distribution in the area this is not relevant to my decision since I have found it is not development which is permitted under Part 3, Class PA of the GPDO.
17. The appellant asserts that the visual amenity and openness of the Green Belt has significantly improved and increased by the demolition of another very large barn. I also note that there have been no objections from interested parties or the Parish Council. However, such matters are not relevant to my determination as to whether the development would constitute permitted development.
18. The appellant asserts that the Council has sold off numerous other similar agricultural buildings, many of which are now dwellings. However, the appellant has provided no substantive details of the buildings referred to and so it is not clear that they are of relevance to the appeal scheme before me. Furthermore, I am obliged to consider the appeal on its own merits.

⁴ Namely 10 years prior to the 19 March 2014.

⁵ 19 March 2014

Conclusion

19. For the reasons given and based upon the evidence before me, I conclude that the proposal is not permitted development under Schedule 2, Part 3, Class PA of the GPDO. Consequently, it is development for which an application for planning permission would be required. The appeal is, therefore, dismissed.

M Savage

INSPECTOR